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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) USGINZ20111
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>February 8, 2010 (VIA EFS)</u></p> <p>Signature <u>Quyen Nguyen</u></p> <p>Typed or printed Quyen Nguyen (VIA EFS) name _____</p>		<p>Application Number 10/612,170</p> <p>Filed July 1, 2003</p> <p>First Named Inventor Vahid C. SAADAT</p> <p>Art Unit 3734</p> <p>Examiner Michael G. Mendoza</p>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

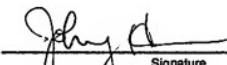
This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/86)
- attorney or agent of record. Registration number 45,565
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



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February 8, 2010

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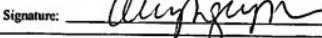
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 1 form are submitted.

This collection of information is required by 35 U.S.C. 122. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Date: February 8, 2010

Signature:  (Quyen Nguyen)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/612,170

Confirmation No.: 5203

Filing Date: July 1, 2003

Inventor(s): Vahid C. SAADAT et al.

Title: METHODS AND APPARATUS FOR GASTRIC REDUCTION

Examiner: Mendoza, Michael G.

Group Art Unit: 3734

REASONS SUPPORTING PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is in response to the Final Office Action mailed October 7, 2009, in the above-identified United States Patent Application. Filed herewith is a Notice of Appeal and fee, and a petition and fee for a one month extension of time. The Commissioner is authorized to charge any other fees due in connection with this filing to **Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ02111**.

A pre-appeal brief review is requested for the reasons set forth below.

INTRODUCTION

The present application relates generally to tissue anchors used in surgery, such as for use in gastric reduction procedures for restricting or narrowing an area of a patient's gastro-intestinal lumen. Embodiments of umbrella-type tissue anchors 100 described in the application are shown at right in FIGS. 12B-C and are described at paragraphs 0076 to 0080. The umbrella anchors 100 include a plurality of support struts 101 and, optionally, a membrane 102. The support struts are

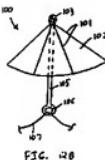


FIG. 12B

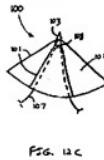


FIG. 12C

preferably hinged to a distal bushing 103, so that the struts may rotate from a reduced delivery profile within a delivery catheter needle to an expanded deployed profile, as shown in FIG. 12B-C. A suture 107 is coupled to the FIG. 12B anchor 100 via an eyelet 106 forming an attachment point at an end of a shank 105. A suture 107 is coupled to the FIG. 12C anchor 100 via an eyelet 108 forming an attachment point on the distal bushing 103.

The anchors 100 include a suture tensioning assembly that retains a tension force on the suture. An embodiment of a fastener 54 is shown below in FIG. 6 and is described in the application at paragraph 0060.

The illustrated fastener comprises a collar 70 having a body 71 and a channel 72 through which sutures 43 may freely translate in a first state (e.g., prior to crimping). Once the fastener 54 is placed in a second state (e.g., crimped), sutures 43 are restrained from further translation through the channel 72, thus retaining a desired amount of tension on the sutures 43.

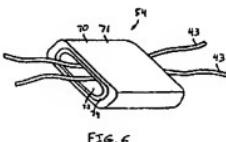


FIG. 6

ISSUES ON APPEAL

The following are the issues on appeal: (a) whether claims 68 and 74-77 should have been rejected under 35 U.S.C. § 102(b) as being anticipated by USP 6,152,946 to Broome et al., and (b) whether claims 69-72 should have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Broome in view of USP 5,709,707 to Lock et al.

ARGUMENT

I. Rejections Based Upon Broome

Claims 68 and 74-77 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Broome patent. Appellant respectfully submits that the Broome patent does not disclose or suggest all of the elements of these claims. Accordingly, there can be no anticipation of these claims.

In Appellant's Response filed 9/23/2008, Appellant amended each of claims 68 and 74 to include the following recitation:

a fastener coupled to said suture and configured to retain a tension force on said suture, said fastener having a first state in which said suture is translatable through said suture and a second state in which said suture is restrained from translation through said fastener.

In the Remarks accompanying those amendments, Appellant described the manner in which those amendments distinguished claims 68 and 74 from the embolic filter device described in the Broome patent, specifically noting that the Broome collar 33 is at all times slideable on the guidewire 32. (See Appellant's 9/23/08 Response, pp. 5-6).

The pending Office Action maintains the rejection of claims 68 and 74-77 over the Broome patent, and responds to Appellant's Remarks with the following "Response to Arguments" (from page 2 of the Office Action):

Applicant's arguments filed 9/23/08 have been fully considered but they are not persuasive. The applicant argues that Broome et al. does not teach a fastener having a first state in which the suture is translatable through the fastener, and a second state in which the suture is restrained from translation through the fastener. The examiner disagrees. Broome et al. teaches a first state wherein 32 is translatable through 33 (fig. 14).

Broome et al. also teaches a second state wherein 192 is within 33, and therefore 32 is not translatable through 33 (figs 15 and 16).

(Emphasis Added). Appellant respectfully submits that the highlighted portion of the above quote is based upon an incorrect reading of the Broome patent. Turning to the referenced portion of the Broome patent, FIGS. 15-16 (reproduced below) illustrate a removal sheath 184 used to withdraw the filter device 150 after use. (See col. 8, ll. 42-65). The removal sheath 184 includes a docking tip 190 having a docking latch 192 that

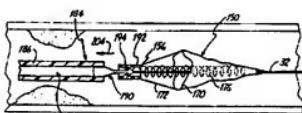


Fig. 15

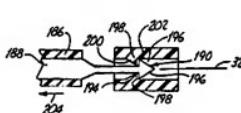


Fig. 16

cooperates with a latch 194 formed on an inner surface of the collar 156. The sheath 184 "is advanced over the guidewire 32 to insert tip 190 through the opening in tubular collar 156." (Broome, col. 8, ll. 53-54). Accordingly, contrary to the contention stated in the Office Action, the docking tip 190 is advanced over the guidewire 32, thereby allowing the guidewire 32 to remain translatable through the collar 33/156 at all times. To remove

any doubt, the Broome specification goes on to describe the filter device withdrawal procedure as follows:

After device 150 is locked to sheath 184, retrieval device 184 is first withdrawn proximally, as illustrated by arrow 204, while maintaining the position of guidewire 32 to force the frame 154 and filter 152 against the spring bias to a low-profile dimension.

(Broome, col. 8, ll. 58-62). The action described in this portion of the Broome patent could not be undertaken unless the collar 156 was also being moved relative to the guidewire 32.

Accordingly, Appellants submit that the "Response to Arguments" stated at page 2 of the pending Office Action is in error. This error was relied upon to reject claims 68 and 74-77. The Broome patent fails to teach at least the foregoing elements recited in each of claims 68 and 74. Accordingly, the rejections of claims 68 and 74, and of the claims dependent therefrom, must be withdrawn.

II. Rejections Based Upon Broome and Lock

Claims 69-72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable for obviousness over the Broome patent in view of the Lock patent. Appellant respectfully submits that the combination of the Broome and Lock patents fails to disclose or suggest all of the elements of these claims. Accordingly, there can be no *prima facie* case of obviousness of these claims.

In Appellant's Response filed 9/23/2008, Appellant amended claim 69 to include the following recitation:

a fastener coupled to the suture and configured to retain a tension force on the suture, the fastener having a first state in which the suture is translatable through the fastener, and a second state in which the suture is restrained from translation through the fastener.

In the Remarks accompanying those amendments, Appellant described the manner in which those amendments distinguished claim 69 from the Lock patent, noting that the Lock device does not include a feature that corresponds with the recited "fastener coupled to a suture," nor that the fastener has "a first state" and "a second state" as recited.

Appellant has already made clear in Section I above that the Broome patent also does not teach or suggest a fastener having the recited "first state" and "second state" features. The "Response to Arguments" set forth at page 2 of the pending Office Action does not change this result, as that response was based upon an improper reading of the Broome patent, as also discussed in Section I above.

Accordingly, because the combination of Broome and Lock fails to teach or disclose at least those limitations of claim 69 discussed above, there can be no prima facie case of obviousness of that claim. The rejection of claim 69 – and of claims 70-72 which depend therefrom – must be withdrawn.

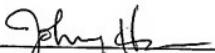
CONCLUSION

In view of the foregoing, the Application is in condition for allowance. The rejections of the pending claims set forth in the Final Office Action should be withdrawn and the claims passed to issue.

Respectfully submitted,

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